



*DATE*  
*JW*

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June 9, 2005

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CHARLES R. ENNIS  
OF COUNSEL

MARTIN J. WEGMAN  
(1918-1977)

\* California and Missouri only  
\*\* Registered Patent Attorney

In re Application of

Inventor : Pike et al.  
Serial No. : 10/088,291  
Filed : July 29, 2002  
Title : MASONRY, MORTAR, AND STUCCO  
CEMENT COMPOSITIONS  
Examiner :  
Art Unit : 1755  
Docket : 020356 116P2  
Customer No. 33805

**MAIL STOP PETITION**

Commissioner for Patents  
P.O. Box 1450  
Alexandria, Virginia 22313-1450

Sir:

Transmitted herewith is the following in the above-identified patent application:

XX Petition to Withdraw Holding of Abandonment Pursuant to 37 C.F.R. §1.181(a) (12 pages)

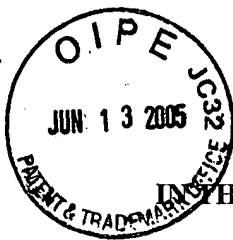
XX Please charge our Deposit Account No. 502431 in the amount of \$ 0.00. The Commissioner is hereby authorized to charge any additional fees under 37 C.F.R. 1.16 and 1.17 which may be required by this paper, or to credit any overpayment, to such account. Two copies of this sheet are enclosed.

Respectfully submitted,  
WEGMAN, HESSLER & VANDERBURG

By Danielle Skoczen  
Danielle A. Skoczen  
Reg. No. 50,991

CERTIFICATE OF MAILING  
I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to: Mail Stop Petition, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450

June 9, 2005  
(Date of Deposit)  
Jacqueline K. Bozjak  
(Typed or printed name of person mailing paper or fee)  
Jacqueline K. Bozjak  
(Signature of person mailing paper or fee)



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Patent Application No.: 10/088,291 Confirmation No.: 1130

Inventor: Pike et al.

Title: MASONRY, MORTAR, AND STUCCO CEMENT  
COMPOSITIONS

Filed: July 29, 2002

Group Art Unit: 1755

Examiner:

Attorney Docket No. : 020356 116P2

MAIL STOP PETITION  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, Virginia 22313-1450

Sir/Madam:

**PETITION TO WITHDRAW HOLDING OF ABANDONMENT  
PURSUANT TO 37 C.F.R. § 1.181(a)**

Applicant, through its attorneys, petitions to withdraw the holding of abandonment of the above-referenced patent application pursuant to 37 C.F.R. § 1.181(a) and M.P.E.P. § 711.03(c) I. A. on the basis that the Notice of Allowance was not received by counsel.

Although Applicant filed a Change of Correspondence on March 30, 2004 requesting that all future correspondence be directed to Customer No. 33805, which is associated with the law firm of Wegman, Hessler & Vanderburg at 6055 Rockside Woods Blvd., Suite 200, Cleveland, Ohio 44131, a Notice of Allowance dated November 1, 2004 and subsequently a Notice of Abandonment dated March 14, 2005 were mailed to counsel's former address at Beibel & French, 35 East First Street, Dayton, Ohio 45402. Counsel did not receive these two communications. A copy of the Change of Correspondence request and return receipt postcard indicating receipt by the P.T.O. is attached as Exhibit A.

Applicant's last communication with the PTO was a Response to an Office Action that Applicant mailed on September 30, 2004 in which the PTO acknowledged receipt with a return

postcard stamped with the date October 4, 2004. As a follow up after the submitted response, counsel's secretary, Barbara Ann Sachs, inquired about the status of the application by calling the PTO on June 2, 2005. At that time, Ms. Sachs was informed that the application was abandoned. Her initial telephone call was with Bob who informed her that the Notice of Allowance had been mailed to Bruce Peacock at Biebel & French on November 1, 2004. He also informed her that a Notice of Abandonment Due to Failure to Pay the Issue Fee was sent to the Biebel & French address on March 14, 2005. Ms. Sachs then reviewed the file and found that the aforementioned Change of Correspondence request had been filed with the PTO.

Ms. Sachs then made a second telephone call to the PTO and spoke with Paul Shapiro. He stated that the applicant could prepare a Petition to Withdraw Holding of Abandonment Based on Non-Receipt of an Office Action. Later that day, Mr. Shapiro telephoned counsel, Bruce Peacock, and informed him about the abandonment and suggested that Mr. Peacock review the above noted MPEP section in order to prepare a petition seeking to withdraw the holding of abandonment.

Because the Change of Correspondence Address was never apparently entered in the file, Applicant did not receive the Notice of Allowance or the Notice of Abandonment. Also, Applicant cannot presently retrieve information from the PAIR system with respect to the application to confirm that the dates set forth above for the Notice of Allowance and Notice of Abandonment are accurate because the application has not been changed for affiliation with customer number 33805.

Attached hereto as Exhibit D is a docket report for the application that is maintained by Applicant's counsel. As shown in Exhibit D, if received, the Notice of Allowance would have been docketed and entered where it is marked with an "A". Counsel's docket clerk, Joyce J. Skulina, has provided a statement to further show that the Office communications were not received.

As support for this Petition, Applicant is submitting the following:

- 1) A copy of the Change of Correspondence Address mailed on March 30, 2004 with a returned postcard stamped by the U.S. Patent and Trademark Office as received on April 1, 2004, identified as Exhibit A;
- 2) A statement by counsel, Bruce E. Peacock, stating the Notice of Allowance and subsequently a Notice of Abandonment were not received, identified as Exhibit B;

- 3) A statement from counsel's docket clerk, Joyce J. Skulina, who would have docketed the Notice of Allowance had it been received, identified as Exhibit C;
- 4) A copy of the docket record showing where the non-received Notice of Allowance would have been entered had it been received, identified as Exhibit D; and
- 5) A statement from secretary, Barbara Ann Sachs, describing her telephone call with the PTO to ascertain the status of the application, identified as Exhibit E.

It is respectfully submitted that the evidence provides the required showing to establish non-receipt of an Office communication in accordance with MPEP §711.03(c) I. A.

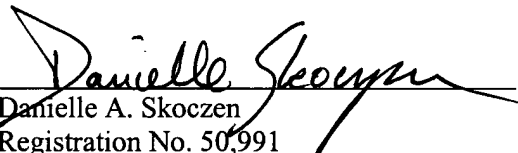
In consideration of these submissions, it is respectfully requested that the holding of abandonment be withdrawn and the Notice of Allowance be sent to the correct address at 6055 Rockside Woods Blvd., Suite 200, Cleveland, Ohio 44131. It is believed that a petition under 37 C.F.R. § 1.181(a) does not require a fee. However, authorization is hereby made to charge a petition fee if one is required, or any other fee that may be associated with the above application, to Deposit Account No. 50-2431.

Respectfully submitted

Date:

6/9/2005

By:

  
Danielle A. Skoczen  
Registration No. 50,991

WEGMAN HESSLER & VANDERBURG  
6055 Rockside Woods Blvd., Suite 200  
Cleveland, Ohio 44131  
PH: 216.642.3342  
FX: 216.642.8826  
WHVIPGroup@wegmanlaw.com



## EXHIBIT A

PLEASE STAMP OR OTHERWISE INDICATE DATE OF  
RECEIPT OF ACCOMPANYING PAPERS  
AND RETURN TO US

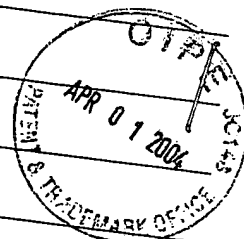
## Change of Correspondence Address

Papers \_\_\_\_\_  
Applicant/Registrant Pike et al.  
Title Masonry, Mortar, and Stucco Cement  
Serial No./Reg. No. 10/088,291  
020356 116P2  
Docket No. bep/jjs  
Date Due 3/30/04

PLEASE STAMP OR OTHERWISE INDICATE DATE OF  
RECEIPT OF ACCOMPANYING PAPERS  
AND RETURN TO US

## Change of Correspondence Address

Papers \_\_\_\_\_  
Applicant/Registrant Pike et al.  
Title Masonry, Mortar, and Stucco Cement  
Serial No./Reg. No. 10/088,291  
020356 116P2  
Docket No. bep/jjs  
Date Due 3/30/04



Serial No.: 10/088,291

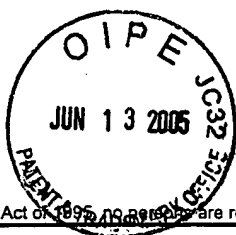


EXHIBIT A

Docket No. 020356 116P2

PTO/SB/122 (09-03)

Approved for use through 11/30/2005. OMB 0651-0035

U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE

Under the Paperwork Reduction Act of 1995, no person is required to respond to a collection of information unless it displays a valid OMB control number.

## CHANGE OF CORRESPONDENCE ADDRESS Application

Address to:  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450.

Application Number	10/088,291
Filing Date	July 29, 2002
First Named Inventor	Pike et al.
Art Unit	
Examiner Name	
Attorney Docket Number	020356 116P2

Please change the Correspondence Address for the above-identified patent application to:

☒ Customer Number : 33805

OR

☐ Firm or  
Individual Name

Address

Address

City

State

Zip

Country

Telephone

Fax

This form cannot be used to change the data associated with a Customer Number. To change the data associated with an existing Customer Number use "Request for Customer Number Data Change" (PTO/SB/124).

I am the:

☐ Applicant/Inventor

☐ Assignee of record of the entire interest.  
Statement under 37 CFR 3.73(b) is enclosed. (Form PTO/SB/96).

☒ Attorney or Agent of record. Registration Number 28,457

☐ Registered practitioner named in the application transmittal letter in an application without an executed oath or declaration. See 37 CFR 1.33(a)(1). Registration Number \_\_\_\_\_

Typed or Printed  
Name Bruce E. Peacock

Signature

Date

3/30/04

Telephone

216-642-3342

NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below.

☐ \*Total of \_\_\_\_\_ forms are submitted.

This collection of information is required by 37 CFR 1.33. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 3 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

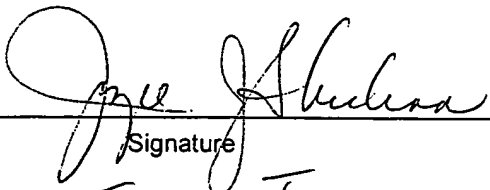
If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.

**Certificate of Mailing under 37 CFR 1.8**

I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to:

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

on March 30, 2004  
Date

  
Signature  
Joyce J. Skurica  
Typed or printed name of person signing Certificate

Note: Each paper must have its own certificate of mailing, or this certificate must identify each submitted paper.

This collection of information is required by 37 CFR 1.8. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 1.8 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.

## EXHIBIT B

Statement of Bruce E. Peacock

I, Bruce E. Peacock, declare that I am a patent attorney for the law firm of Wegman, Hessler & Vanderburg, and formerly a patent attorney with the law firm of Biebel and French. I am involved in prosecuting U.S. Patent Application Serial No. 10/088,291. I hereby state:

(a) On June 2, 2005, I was informed that a Notice of Abandonment had been issued in the above application in a phone call made to me by Mr. Paul Shapiro of the USPTO. Mr. Shapiro thoughtfully indicated that I should review MPEP §711.03(c) I.A. in order to seek revival of the application. I then followed up with my secretary, Barbara Ann Sachs, who informed me that she had also spoken with Mr. Shapiro that day about the Notice of Abandonment. Ms. Sachs indicated that our office never received the Notice of Allowance or Notice of Abandonment referred to by Mr. Shapiro. Ms. Sachs further indicated to me that a Change of Correspondence form had been sent to the PTO so that correspondence should have been mailed to us at our present address.

(b) My search of the file jacket and the docket records in my office indicates that the Notice of Allowance and Notice of Abandonment were not received by us.

I declare that all statements made herein of my own knowledge are true and that all statements made herein on information and belief are believed to be true; and that I am aware that false statements and the like are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code, and may jeopardize the validity of the application or any registration resulting therefrom.

WEGMAN, HESSLER & VANDERBURG

Date: June 9 2005

by:



Bruce E. Peacock  
Registration No. 28,457



EXHIBIT C

Statement of Joyce J. Skulina

I, Joyce J. Skulina, declare that I am the lead docket clerk for the Intellectual Property Section of the law firm of Wegman, Hessler & Vanderburg. I hereby state:

- (a) I am responsible for opening and docketing all the mail received from the U.S. Patent and Trademark Office ("PTO").
- (b) We use the patent docketing and management database known as The Patent Management System from Computer Packages Inc to docket all communications received from the PTO.
- (c) Neither the Notice of Allowance or the Notice of Abandonment was received by us from the PTO for U.S. Application Serial No. 10/088,291. If the Notice of Allowance would have been received, it would have been docketed on the line in Exhibit D that is marked with an "A".

I declare that all statements made herein of my own knowledge are true and that all statements made herein on information and belief are believed to be true; and that I am aware that false statements and the like are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code, and may jeopardize the validity of the application or any registration resulting therefrom.

WEGMAN, HESSLER & VANDERBURG

Date: June 9, 2005

by: Joyce J. Skulina  
Joyce J. Skulina

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**Country Application**

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**Wednesday, June 08, 2005****Page: 1**

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**Case Number:** ASH 116**Country:** US**SubCase:** P2PC**Client:** HEADWATERS RESOURCES, INC.

United States of America

**Case Type:** PCT**Application Status:** Pending**Application Number:** 10/088,291**Filing Date:** 29-Jul-2002**Publication Number:****Publication Date:****Patent Number:****Issue Date:****Parent/PCT Number:** US00/25907**Parent/PCT Date :** 21-Sep-2000**Parent Issue Number:****Parent Issue Date :****Tax Schedule:** LE**Expiration Date:****Confirmation #:** 1130**Patent Term Adjustment:** 0**Agent:****Agent Reference #:****Remarks:** 4/6/04 POSTCARD RECVD OF CHANGE OF CORR ADDRESS FILED

**Country Application**

Wednesday, June 08, 2005

Page: 2

**List Of Actions**

Action(s) Due	Due Date		Action Taken
Filing Receipt Recvd?	14-May-2002	Reminder	23-Dec-2002
Information Disclosure Strmnt	14-Jun-2002	Due Date	23-Dec-2002
Response Due	22-Jul-2002	Due Date	22-Jul-2002
1st Extension	22-Aug-2002	Reminder	22-Jul-2002
2nd Extension	22-Sep-2002	Reminder	22-Jul-2002
Filing Receipt Recvd?	29-Sep-2002	Reminder	29-Mar-2004
3rd Extension	22-Oct-2002	Reminder	22-Jul-2002
Information Disclosure Strmnt	29-Oct-2002	Due Date	29-Mar-2004
4th Extension	22-Nov-2002	Reminder	22-Jul-2002
Final Deadline	22-Dec-2002	Final	22-Jul-2002
US-Missing Part Follow Up Date	22-Jan-2003	Due Date	02-Aug-2002
1 Month to Due Date	30-Apr-2003	Reminder	30-Apr-2003
Response Due	31-May-2003	Due Date	29-May-2003
1st Extension	30-Jun-2003	Reminder	29-May-2003
2nd Extension	31-Jul-2003	Reminder	29-May-2003
3rd Extension	31-Aug-2003	Reminder	29-May-2003
Application Status Check	14-Sep-2003	Due Date	29-Oct-2003
2 Weeks To Final Date	15-Sep-2003	Due Date	29-May-2003
6 Month Final Date	30-Sep-2003	Final	29-May-2003
US-2 Month Offi Follow Up Date	29-Nov-2003	Due Date	29-Mar-2004
Application Status Check	29-Jan-2004	Due Date	29-Mar-2004
STATUS CHECK	04-Apr-2004	Reminder	29-Mar-2004
1 Month to Due Date	02-Aug-2004	Reminder	03-Aug-2004
3 Month Due Date	02-Sep-2004	Due Date	02-Sep-2004
Application Sta Follow Up Date	29-Sep-2004	Due Date	15-Jun-2004
1st Extension	02-Oct-2004	Reminder	30-Sep-2004
2nd Extension	02-Nov-2004	Reminder	30-Sep-2004
2 Weeks to Final Date	17-Nov-2004	Due Date	30-Sep-2004
6 Month Final	02-Dec-2004	Final	30-Sep-2004
US-3 Month Offi Follow Up Date	30-Mar-2005	Due Date	

"A"

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## Country Application

Wednesday, June 08, 2005

Page: 3

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**User ID:** jjskulina

**Date Created:** 14-Nov-2002

**Last Update:** 13-May-2004

EXHIBIT E

Statement of Barbara Ann Sachs

I, Barbara Ann Sachs, declare that I am a patent secretary for the law firm of Wegman, Hessler & Vanderburg. I hereby state:

- (a) Because we had not received communication from the PTO responsive to an amendment that we had submitted, on June 2, 2005, I made inquiry about the status of the U.S. Patent Application No. 10/088,291 by calling the PTO Customer Service Line. At that time, I spoke with Bob from the PTO who informed that the application was abandoned due to failure to pay the issue fee. Bob indicated that a Notice of Allowance was mailed to the former address of Biebel & French on November 1, 2004 and a Notice of Abandonment was mailed to the former address of Biebel & French on March 14, 2005.
- (b) I was further informed that the application could probably be revived if a Correspondence Change form had been filed.
- (c) I then checked the file and our docket sheets and found that we had not received either the Notice of Allowance or the Notice of Abandonment and that a Correspondence Change request form had been submitted to and received by the PTO.
- (d) I then called the PTO again and spoke with Mr. Shapiro who informed me about the requirements needed to file a Petition to Revive.
- (e) I then conferred with Mr. Peacock about the status of the application.


I declare that all statements made herein of my own knowledge are true and that all statements made herein on information and belief are believed to be true; and that I am aware that false statements and the like are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code, and may jeopardize the validity of the application or any registration resulting therefrom.

WEGMAN, HESSLER & VANDERBURG

Date:

June 9, 2005

by:

  
Barbara Ann Sachs